sep 10 2001

Nos. 00-1531 and 00-1711

SUPREME COURT, U.S.
FILED
SEP 10 2001
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IN THE

Supreme Court of the United States

VERIZON MARYLAND INC., and
UNITED STATES OF AMERICA,
Petitioners,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENTS MCI WORLDCOM, INC. AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC IN SUPPORT OF PETITIONERS

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September 10, 2001

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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QUESTION PRESENTED

Whether a federal district court has subject matter jurisdiction under 28 U.S.C. § 1331 to determine whether a state commission's action interpreting or enforcing an interconnection agreement violates the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, respondents MCI WORLDCOM, Inc., and MCImetro Access Transmission Services LLC, state as follows:

MCI WORLDCOM, Inc. is now known as WorldCom, Inc. WorldCom, Inc. is a Georgia corporation that, through its wholly owned subsidiaries, provides local, long distance, and other telecommunications services domestically and internationally. WorldCom, Inc. is a publicly traded company on the NASDAQ National Market under the symbols "WCOM" and "MCIT." WorldCom, Inc. has no parent corporations. No publicly held company owns 10 percent or more of WorldCom, Inc.'s stock. WorldCom, Inc. owns controlling interests in Embratel Participacoes, S.A., and Digex, Incorporated, both of which issue shares to the public.

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BRIEF OF RESPONDENTS MCI WORLDCOM, INC. AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC IN SUPPORT OF PETITIONERS

Respondents MCI WORLDCOM, Inc., and MCImetro Access Transmission Services LLC (collectively "WorldCom"), through undersigned counsel, submit this brief in support of petitioners, seeking reversal of the decision of the United States Court of Appeals for the Fourth Circuit in *Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279 (4th Cir. 2001), Pet. App. 1a-72a. As we show, the Fourth Circuit erroneously held that federal courts lack subject matter jurisdiction under 28 U.S.C. § 1331 to entertain federal law challenges to state commission determinations enforcing pre-

existing interconnection agreements between competing local carriers.

STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 252(e)(6) to review the determination of the Public Service Commission of Maryland ("PSC") for compliance with federal law.

The judgment of the court of appeals was entered on February 14, 2001. Petitions for writs of certiorari were timely filed on April 5, 2001 (by Verizon Maryland Inc.), and on May 15, 2001 (by the United States). The petitions were granted, and the cases consolidated, on June 25, 2001. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT

Verizon Maryland Inc. ("Verizon") filed this action in federal district court against WorldCom and a number of other competing carriers, the PSC, and individual PSC Commissioners ("Commissioners"), challenging the PSC's June 11, 1999, Order enforcing the "interconnection agreement" entered into between Verizon and MFS Intelenet of Maryland ("MFS"), pursuant to the Telecommunications Act of 1996 ("1996 Act" or "Act"), Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*[1] Verizon's complaint alleged, *inter alia*, that the PSC's Order violates the 1996 Act

[1] MFS later was acquired by WorldCom. Verizon was formerly known as Bell Atlantic Maryland, Inc., the name which appears in the decision of the court below.

and various implementing regulations of the Federal Communications Commission ("FCC").

1. The Statutory Scheme

The 1996 Act fundamentally changed the regulation of the local telephone industry throughout the country. In the Communications Act of 1934, Congress left regulation of intrastate telecommunications primarily to the states. *See* 47 U.S.C. § 152(b); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986). The states, in turn, historically granted exclusive franchises to incumbent local telephone companies like Verizon. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999); H.R. Rep. No. 104-204, at 49 (1995).

Congress enacted the 1996 Act for the express purpose of ending this monopoly regime and promoting a competitive market for local telephone service. *See AT&T Corp.*, 525 U.S. at 371. Toward that end, the 1996 Act partially supplants state regulation and imposes a new set of substantive federal standards and procedures governing interconnection between incumbent local companies and potential competitors. *Id.* at 371-73. Congress thus altered the prior balance of federal and state regulatory authority in the area of local telecommunications. *Id.* at 371.

Under the Act, a new entrant that wishes to enter a local telephone market must contact the incumbent carrier to negotiate the terms of interconnection. *See* 47 U.S.C. § 252(a)(1). If the two carriers cannot reach an agreement, they must ask the governing state commission to conduct an "arbitration" to resolve disputed issues. *Id.* § 252(b)(1). The results of the negotiation and arbitration process are memorialized in an "interconnection agreement" between the

carriers, which is then submitted for approval to the state commission. *Id.* § 252(e).

Although the Act supplies minimum requirements that state commissions must follow in arbitrating provisions about which the parties cannot reach a negotiated agreement, parties may negotiate terms "without regard" to these requirements. *Id.* § 252(a)(1). When parties voluntarily agree to terms, a state commission may reject the terms only if they are discriminatory or against the public interest, convenience, or necessity. *Id.* § 252(e)(2)(A); *see also AT&T Corp.*, 525 U.S. at 371-73.

Thus, in the spirit of cooperative federalism, Congress vested the FCC with the primary authority to implement the federal standards created by the Act, *AT&T Corp.*, 525 U.S. at 377-84 & n.5; 47 U.S.C. §§ 201(b), 251(d)(1), while at the same time, carving out a new, voluntary role for states in overseeing interconnection agreements. The Act in no way requires state commissions to help implement the new federal scheme. If a state commission declines to participate, the FCC will assume that function. 47 U.S.C. § 252(e)(5).

Whether rendered by a state commission or the FCC, agency determinations regarding the terms of interconnection agreements are subject to review in federal court for compliance with the Act. If a state commission elects to participate in the Act's implementation, "any party aggrieved . . . may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section[s] 251 . . . and [252]." 47 U.S.C. § 252(e)(6); *see also AT&T Corp.*, 525 U.S. at 378 n.6 ("there is no doubt . . . that if the federal courts believe a state

commission is not regulating in accordance with federal policy they may bring it to heel").[2]

2. Nature of the Dispute

This case concerns one aspect of the parties' interconnection agreement, known as "reciprocal compensation," which is the payment that a local carrier receives for completing a call for another local carrier. With local competition, customers of one local carrier will call customers of another. Carriers must therefore assist each other in delivering calls. When a customer of one local carrier makes a call to a customer of another local carrier, only the caller pays its carrier for the telephone services, leaving the other carrier uncompensated. The caller's local carrier therefore must compensate the other carrier whose facilities are used to complete the call. *See* 47 U.S.C. § 251(b)(5); *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 2-3 (D.C. Cir. 2000).

Verizon and MFS agreed in their negotiated interconnection agreement to pay each other reciprocal compensation for the exchange of "Local Traffic." Pet. App. 95a. Local Traffic is defined in the parties' interconnection agreement as a call within a given local calling area, or expanded area service ("EAS") area, to another local telephone number. Pet. App. 95a. The dispute in this case was whether calls by local customers of one carrier that are routed by another carrier to its local customers operating as "Internet Service Providers" ("ISPs") constitute "Local Traffic" as defined in the interconnection agreement.

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[2] If the FCC has acted in lieu of a state commission, its determinations are reviewed by a federal court of appeals under the Hobbs Act. *See* 28 U.S.C. § 2342(1).

The parties' interconnection agreement was approved by the PSC on October 9, 1996. In April 1997, after operating under the approved agreement for over six months, Verizon announced that it was unilaterally stopping reciprocal compensation payments for calls to local ISPs, claiming for the first time that such calls are not "Local Traffic." Pet. App. 94a. In response, MFS filed a complaint with the PSC to enforce the agreement by requiring Verizon to resume payments of reciprocal compensation for ISP calls. *Id.* On September 11, 1997, the PSC issued a letter order in which it ruled that the plain language of the agreement mandated payment of reciprocal compensation for calls to ISPs. *Id.* at 95a-97a.[3] Verizon appealed that order under Maryland state law to the Montgomery County Circuit Court, which affirmed the order in its entirety. Verizon did not file suit in federal court. Compl. ¶ 34.[4]

On February 26, 1999, the FCC issued a Declaratory Ruling (the "*ISP Order*") in which it held that a carrier's right to reciprocal compensation for calls to ISPs is governed by the terms of the parties' interconnection agreement. Pet. App. 96a-97a.[5] The FCC found that parties are "bound by their existing

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[3] On December 2, 1998, Sprint Communications Company, LP ("Sprint") filed a complaint with the PSC alleging that Verizon unlawfully refused to enter into an interconnection agreement unless it stated that calls to ISPs are not local and not subject to reciprocal compensation. Pet. App. 96a. On February 9, 1999, the PSC ruled that calls to ISPs are in fact "local in nature" and subject to reciprocal compensation. *Id.*

[4] *See* Civil Action No. 178260, Docket Entry No. 36 (Cir. Ct. Montgomery County, Md. March 26, 1998). Compl. ¶ 34.

[5] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-*
(continued...)

interconnection agreements, as interpreted by state commissions," including those that require payment of reciprocal compensation for calls to ISPs. *Id.* at 97a (internal quotation and citation omitted). The FCC further held that there is "no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic." *ISP Order* ¶ 21. The FCC also described several factors that state commissions might consider in determining whether parties had agreed in their interconnection agreements to pay reciprocal compensation for calls to ISPs, including the fact that for years, both the FCC and incumbent carriers traditionally had treated calls to ISPs as local. *Id.* ¶¶ 23-24; Pet. App. 97a-99a. The FCC concluded, however, (i) that calls to ISPs are "jurisdictionally mixed," (ii) that a substantial portion of ISP-bound traffic is interstate for jurisdictional purposes, and (iii) that the Act did not mandate that reciprocal compensation be paid for these calls.[6] *ISP Order* ¶¶ 1, 22; Pet. App. 96a.

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[5] (...continued)
Bound Traffic, 14 F.C.C.R. 3689 (1999) ("*ISP Order*"), *vacated*, *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 9 (D.C. Cir. 2000).

[6] At WorldCom's request, the D.C. Circuit vacated that order for want of reasoned decision making. *Bell Atlantic Tel. Cos.*, 206 F.3d at 9. The FCC recently has concluded that the Act does not require reciprocal compensation for these calls, established prospectively a new federal compensation regime for this traffic, and determined that its new order does not affect preexisting contract obligations or state commission decisions like those at issue in this case. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 01-131 (rel. Apr. 27, 2001). WorldCom and other parties have appealed that decision to the D.C. Circuit. *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. filed May 17, 2001).

On March 3, 1999, Verizon petitioned the PSC for an order declaring that the *ISP Order* "conclusively establishe[d]" that calls to ISPs are not local and not subject to reciprocal compensation under the terms of its various interconnection agreements with MFS and others. *Petition for Declaratory Order that Internet Traffic is not "Local" Traffic Subject to Reciprocal Compensation*, No. 8731, at 9 (PSC of Md. filed Mar. 3, 1999); Pet. App. 91a. On June 11, 1999, the PSC denied Verizon's petition and rejected its contention that the FCC's *ISP Order* dictated whether or not reciprocal compensation was owed for calls to ISPs. Pet. App. 99a. The PSC thus affirmed its earlier determination that Verizon owed MFS reciprocal compensation for calls to ISPs under the terms of parties' interconnection agreement. Pet. App. 107a. The PSC also required Verizon to pay reciprocal compensation for calls to ISPs, on an interim basis, to any carrier with whom Verizon did not have an interconnection agreement specifying that such payments were not required. *Id.*[7]

3. The District Court Proceedings

On July 14, 1999, Verizon filed suit in the United States District Court for the District of Maryland against the PSC, the individual PSC Commissioners (collectively, the "PSC Defendants"), and various competitors, including WorldCom and MFS, to challenge the PSC's determination. Verizon sought declaratory and injunctive relief under 47 U.S.C. § 252(e)(6). Verizon asserted jurisdiction under both § 252(e)(6) and 28 U.S.C. § 1331. Compl. ¶ 21. Both counts of the complaint alleged violations of federal law. Compl. ¶¶ 40, 42. In Count One, Verizon alleged that the PSC's

[7] This was based in part on the PSC's determination that, unless the parties have negotiated a contrary arrangement, for the PSC "[t]o fail to provide for any compensation would violate the 1996 Act." Pet. App. 106a.

determination that Verizon owed reciprocal compensation under its agreement with MFS violated the 1996 Act and the FCC's *ISP Order* as well as the terms of the agreement itself. Compl. ¶¶ 1, 5-7, 40. In Count Two, Verizon alleged that the PSC's decision to require reciprocal compensation where the parties lacked an agreement also violated the 1996 Act and the FCC's *ISP Order*. Compl. ¶¶ 1, 5-7, 42.[8] Numerous allegations relating to both counts described Verizon's view of the federal requirements. Compl. ¶¶ 3, 4, 5, 7, 25, 31-32, 37-38.

After briefing by the parties, the District Court granted the PSC Defendants' motion to dismiss on the grounds that those Defendants were immune from suit under the Eleventh Amendment and that the case could not proceed under Federal Rule of Civil Procedure 19(b) because they were indispensable parties. Pet. App. 77a-86a. The district court also held that Count Two of Verizon's complaint was unripe. Pet. App. 86a-90a. The court refused to address the PSC Defendants' argument that the court lacked subject matter jurisdiction under section 252(e)(6), Pet. App. 76a, and noted that it was not "willing to recognize an independent federal cause of action under § 1331," Pet. App. 90a.

4. The Fourth Circuit's Decision

A divided panel of the United States Court of Appeals for the Fourth Circuit affirmed. *Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279 (4th Cir. 2001), Pet. App. 1a-72a. Parting ways with every federal court of appeals to

[8] Verizon also alleged that both determinations were arbitrary and capricious and not the result of reasoned decision making. Compl. ¶¶ 40, 42.

have addressed the issue, the court first held that the PSC Defendants were immune from suit in federal court because (1) the PSC had not waived its Eleventh Amendment immunity by voluntarily participating in the administration of interconnection agreements under the 1996 Act and (2) suit against the individual commissioners could not proceed under *Ex parte Young*. Pet. App. 8a-30a. In ruling on the immunity issues, the court repeatedly concluded that the PSC Defendants were not indispensable parties to a suit for review of a PSC determination under the 1996 Act. The court then held that it lacked subject matter jurisdiction under section 252(e)(6) because that section granted federal courts jurisdiction to review only state commission determinations approving or rejecting interconnection agreements, not determinations enforcing previously approved agreements. Pet. App. 30a-47a.

Finally, the court held that it also lacked subject matter jurisdiction under 28 U.S.C. § 1331. Pet. App. 47a-50a. The court rested this conclusion on three grounds. First, it looked to section 601(c) of the Act, which provides that the Act "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided." Pub. L. No. 104-104, § 601(c), *reprinted at* 47 U.S.C. § 152 note; Pet. App. 48a. The Fourth Circuit, however, read section 601(c) as preserving only state, not federal, law. Pet. App. 48a (stating that section 601(c) "states that the Act is not to be construed 'to modify, impair or supersede . . . state, or local law *unless expressly so provided*'") (emphasis and ellipsis omitting the word "federal" supplied by the court). Pet. App. 39a. Combining this reading of section 601(c) with its narrow construction of section 252(e)(6), the court concluded that Congress must have intended section 252(e)(6) as a limit on the federal courts' jurisdiction under section 1331. Pet. App. 48a. According to the court, therefore, it would be "nonsensical" to conclude that

Congress intended federal questions not encompassed by section 252(e)(6) to be heard in federal court. *Id.* Second, the court reasoned that the federal interest in federal claims arising out of interconnection agreements under the 1996 Act was not "sufficiently substantial . . . to confer jurisdiction under 28 U.S.C. § 1331." Pet. App. 48a-50a. Third, the court intimated that under the principles of the *Rooker-Feldman* doctrine, review in federal court under section 1331 of a state commission's determination interpreting and enforcing an interconnection agreement under the 1996 Act could effectuate an impermissible "federal intrusion into State affairs."[9] Pet. App. 50a.

In a strongly worded dissent, Judge King disagreed with every one of the majority's holdings, characterizing the majority opinion as being in "defiance" of this Court's clear admonitions and unnecessarily injecting "equivocation" and "chaos" "where once there was certitude." Pet. App. 52a. Judge King rejected the majority's "narrow construction" of section 252(e)(6) and reasoned, in accord with every other court of appeals to have reached the issue, that the grant of authority in section 252(e)(6) "necessarily includes the power to enforce the interconnection agreement." Pet. App. 55a (internal quotation and citation omitted). In addition, Judge King concluded that because two counts in Verizon's complaint expressly alleged violations of federal law, its complaint unquestionably arose under federal law. Pet. App. 56a-57a.

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[9] On the same day, the Fourth Circuit issued a companion decision in a case involving an ISP dispute in North Carolina. *BellSouth Telecommunications, Inc. v. North Carolina Utils. Comm'n*, 240 F.3d 270 (4th Cir. 2001), *petition for cert. filed*, 69 U.S.L.W. 3740 (U.S. May 14, 2001) (No. 00-1699). Both the issues and the court's analysis in that case were identical in all material respects to the issues and the decision in the *Bell Atlantic* case below.

Judge King summarized his disagreement with the majority as follows:

> Unfortunately, by its holding that federal court jurisdiction is limited to reviewing the approval and rejection of interconnection agreements by State commissions, the majority will create a confusing and unworkable scheme of federal and state review that is bound to produce absurd results. First, as the Tenth Circuit explained:
>
> A rule that restricted a district court's jurisdiction to review of a state commission's approval or rejection of an interconnection agreement would lead to results that Congress could not have intended. Under such a rule, certain state commission decisions would escape federal review simply because the dispute arose after the agreement had been approved. *Brooks Fiber Communications*, 235 F.3d at 497.
>
> Second, the majority's holding – if imprudently followed across the country – could result in fifty states reaching fifty different conclusions about the interpretation of an important federal statute. And, finally, the majority's position undermines, and renders entirely meaningless, the recent explicit statement of Justice Scalia that "there is no doubt . . . that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel." *Iowa Utils. Bd.*, 525 U.S. at 379 n.6.

Pet App. 57a-58a.[10/]

Both Verizon and the United States filed petitions for certiorari, presenting the same four questions: (i) whether a state commission decision enforcing and interpreting an interconnection agreement is a determination under section 252(e)(6); (ii) whether federal courts have jurisdiction over such decisions pursuant to 28 U.S.C. § 1331; (iii) whether the PSC waived its immunity by voluntarily participating in the administration of the Act; and (iv) whether suit against the Commissioners was proper under *Ex parte Young*. Pet. of United States at I; Pet. of Verizon at i. On June 25, 2001, the Court granted both petitions, limited to the second question presented: Whether a federal district court has subject matter jurisdiction under 28 U.S.C. § 1331 to determine whether a state commission's action interpreting or enforcing an interconnection agreement violates the 1996 Act.[11/] *See* 121 S. Ct. 2548 (2001). The cases were then consolidated by the same order. *Id.*

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[10] Judge King also rejected the majority's conclusions that the PSC Defendants were entitled to Eleventh Amendment immunity and that suit could not be maintained under the doctrine of *Ex parte Young*. Pet. App. 58a-72a.

[11] *See* Pet. of United States at I. Verizon, in its petition, formulated the question as follows: "Whether, if 47 U.S.C. § 252(e)(6) does not apply, a federal district court has independent subject matter jurisdiction under 28 U.S.C. § 1331 to determine whether a state public utility commission's action interpreting or enforcing an interconnection agreement violates the Telecommunications Act of 1996." *See* Pet. of Verizon at i.

This case is closely related to *Mathias v. WorldCom Technologies, Inc.*, No. 00-878, which also is currently before the Court. There, on review of a Seventh Circuit decision arising out of similar facts, the Court is considering issues also decided below by the Fourth Circuit – including whether section 252(e)(6) of the 1996 Act provides federal jurisdiction for review of state commission determinations interpreting or enforcing an interconnection agreement, whether the Eleventh Amendment precludes suit against state commissioners to remedy alleged violations of federal law, and whether suit against the individual state commissioners may proceed under *Ex parte Young*. *See Mathias v. WorldCom Technologies, Inc.*, 121 S. Ct. 1224 (2001). The Fourth Circuit in this case and the Seventh Circuit in *Mathias* reached opposite conclusions on those questions.

SUMMARY OF THE ARGUMENT

In this case, the Court has granted review to consider only the question whether, if section 252(e)(6) does not apply, federal courts have general federal question jurisdiction under 28 U.S.C. § 1331 to address claims by carriers that the decision of a state commission interpreting or enforcing an interconnection agreement violates federal law. As we explain in our *Mathias* brief, actions filed by carriers seeking review of state commission decisions interpreting or enforcing interconnection agreements may be brought under section 252(e)(6) of the 1996 Act to determine compliance with federal law. If this Court holds in *Mathias* that section 252(e)(6) grants federal court jurisdiction over enforcement actions such as this, the question presented here will be moot.

Regardless of whether section 252(e)(6) is interpreted as an independent grant of jurisdiction, however, section 1331 unquestionably provides general federal question jurisdiction in these circumstances. While WorldCom fully supports the Fourth Circuit's conclusion that Verizon's substantive federal claims are without merit, those claims were not wholly frivolous or insubstantial at the time they were raised and, therefore, "arise under" federal law. Bedrock principles of federal jurisprudence establish that federal courts have general federal question jurisdiction under section 1331 to address non-frivolous claims that state officials have violated federal law. Here, the Fourth Circuit erred by *first* reaching the ultimate conclusion on the merits (that Verizon's federal claims lacked merit), and *then* working back from that conclusion to determine that the court therefore lacked jurisdiction over Verizon's complaint. That analysis is precisely backward.

Indeed, given the general grant of federal question jurisdiction in section 1331, the fundamental question presented in both this case and *Mathias* is whether anything in section 252 *withdraws* federal question jurisdiction as to this one category of federal claims. The answer to that question is clear. Nothing in section 252(e)(6) – or any other provision of the 1996 Act – suggests a congressional intent to *bar* federal jurisdiction over claims that state commission enforcement determinations violate the Act. General federal question jurisdiction under section 1331 therefore exists in this case, as it did in *Mathias*.

ARGUMENT

I. FEDERAL COURTS HAVE GENERAL FEDERAL QUESTION JURISDICTION TO DETERMINE WHETHER STATE COMMISSION "ENFORCEMENT" DETERMINATIONS VIOLATE THE 1996 ACT.

The face of Verizon's complaint establishes that Verizon alleged claims turning on federal law that are not wholly insubstantial or frivolous. The district court therefore had subject matter jurisdiction to consider them, as nothing in the 1996 Act withdraws general federal question jurisdiction over claims that state officials have violated federal law.

A. Verizon Raised Federal Questions That Federal Courts Have Jurisdiction to Answer under 28 U.S.C. § 1331.

Regardless of how the Court rules in *Mathias* on the scope of section 252(e)(6), the district court plainly had jurisdiction under section 1331 to consider Verizon's federal claims. A civil action "arises under" federal law for purposes of section 1331 when a "right or immunity created by the Constitution or laws of the United States [is] an element, and an essential one, of the plaintiff's cause of action." *Gully v. First Nat'l Bank*, 299 U.S. 109, 112 (1936); *accord City of Chicago v. International College of Surgeons*, 522 U.S. 156, 163-64 (1997).

To determine the existence of federal question jurisdiction, the court "must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the

Constitution and laws of the United States." *Bell v. Hood*, 327 U.S. 678, 681 (1946). As this Court recently reaffirmed:

> [T]he district court has jurisdiction if "the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another."

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89 (1998) (quoting *Bell v. Hood*, 327 U.S. at 685).

As with Ameritech's complaint in *Mathias*, Verizon's complaint here easily satisfies these jurisdictional requirements. As noted, Verizon brought two counts in its complaint, both of which directly identify alleged violations of federal law. In each count, Verizon "claims a right to recover under the . . . laws of the United States. *Bell v. Hood*, 327 U.S. at 681. "[T]he right of the petitioners to recover" thus depends upon the construction of the "laws of the United States." *Steel Co.*, 523 U.S. at 89. In Count I, Verizon alleged that "[t]he PSC's decision . . . is inconsistent with federal law[.]" Compl. ¶ 40. In Count II, Verizon again alleged that "[t]he PSC's decision . . . violates federal law[.]" Compl. ¶ 42. In factual and legal allegations relating to both counts, Verizon alleged:

- The 1996 Act mandates specific kinds of reciprocal compensation duties. Compl. ¶¶ 3, 25.
- Federal law permits reciprocal compensation only for local calls. Compl. ¶ 4.
- Under FCC precedent, calls to ISPs cannot be considered local. Compl. ¶¶ 4, 25, 31-32, 35.

- The PSC "failed to apply the FCC's decisions." Compl. ¶ 5.

- The PSC "misread the relevant FCC order." Compl. ¶¶ 6; *see also id.* ¶¶ 37-39.

- Verizon is "entitled to a declaration that the PSC's determinations are unlawful." Compl. ¶ 7.

Each count thus required the courts below to consider federal law as an "essential element" of Ameritech's claims. Jurisdiction therefore exists under section 1331. As this Court explained when addressing the scope of section 1331, "[i]t is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights." *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (citing *Ex parte Young*, 209 U.S. 123, 160-62 (1908)).

Of course, federal claims challenging state commission determinations as contrary to federal law need not be *meritorious* in order to fall within the jurisdiction of the federal courts. It is "well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Bell v. Hood*, 327 U.S. at 682; *accord Jackson Transit Auth. v. Local Div. 1285*, 457 U.S. 15, 21 n.6 (1982). The "absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional *power* to adjudicate the case." *Steel Co.*, 523 U.S. at 89 (emphasis in original). "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of

merit as not to involve a federal controversy." *Id.* (internal quotations and citations omitted).

The Fourth Circuit nevertheless failed to heed this critical distinction. Without actually holding as much, the Fourth Circuit determined that under the current state of the law, Verizon's federal claims – that state officials had violated federal law in orders requiring reciprocal compensation for calls to ISPs – ultimately had no merit. *See* Pet. App. 23a-29a, 47a-50a. To be sure, WorldCom agrees with the Fourth Circuit that Verizon's federal claims lacked merit. *See, e.g., Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493 (10th Cir. 2000); *Southwestern Bell Tel. Co. v. Public Util. Comm'n of Texas*, 208 F.3d 475 (5th Cir. 2000); *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999), *cert. denied*, 530 U.S. 1284 (2000). That, however, is irrelevant to the jurisdictional analysis. The fact remains that Verizon raised non-frivolous claims requiring the court to construe and apply federal law. Accordingly, these cases properly fell within the court's subject matter jurisdiction, as this Court's precedent confirms. *Bell v. Hood*, 327 U.S. at 682; *accord Jackson Transit*, 457 U.S. at 21 n.6.

The Fourth Circuit relied on this Court's decision in *Jackson Transit* to defend its holding, describing this case and *Jackson Transit* as "closely analogous." Pet. App. 49a. In *Jackson Transit*, a labor union argued, similar to Verizon's arguments below, that collective bargaining agreements were governed by federal law because a federal statute required local governments to execute those agreements. 457 U.S. at 20-21. This Court disagreed, holding that the interpretation of contractual terms raises a question of federal law only if the statute at issue demonstrates that Congress intended that "the

rights and duties contained in [such] contracts be federal in nature." *Id.* at 23.

This case *is* closely analogous to *Jackson Transit*. In both cases, parties incorrectly argued that federal law governed the interpretation of contracts merely because federal law required the parties to enter into the contracts. Pet. App. 49a. Responding to Verizon's argument that interconnection agreements must be interpreted under federal law because the Act requires their formation, the Fourth Circuit correctly held that "[i]t is a question of State law, however, whether the interconnection agreement at issue in this case includes a dynamic incorporation of statutory interpretation." Pet. App. 27a. Citing *Jackson Transit*, 457 U.S. at 29, the Fourth Circuit also correctly concluded that merely because Congress required parties to enter into a contract does not render interpretation of that contract a federal question. Pet. App. 49a. As the Fourth Circuit noted, the Act permits parties to negotiate and voluntarily agree upon interconnection terms, as occurred here. Pet. App. 27a, 40a. And nothing in the Act suggests that Congress intended to transform every question regarding the meaning of an interconnection agreement into a federal question. To the contrary, Congress expressly preserved state law that is consistent with the Act. It declared that "this Act . . . shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided in such Act or amendments." Pub. L. No. 104-104, § 601(c)(1), *reprinted at* 47 U.S.C. § 152 note. The Act additionally provides that states may impose state law requirements in interconnection agreements and that pro-competitive state law requirements that do not conflict with the Act are not preempted. 47 U.S.C. §§ 251(d)(3); 252(e)(3); 261(c).

But contrary to the Fourth Circuit's conclusion on jurisdiction, *Jackson Transit* actually demonstrates why the district court *did* have jurisdiction here. Even though the Court in *Jackson Transit* rejected the union's claim that federal law governed interpretation of the contracts – much as Verizon's similar claims here are without merit – the Court affirmed the Sixth Circuit's conclusion that the federal courts had jurisdiction over the union's complaint. As the Court explained:

> Thus, we agree with the Court of Appeals that, strictly speaking, the District Court had jurisdiction under 28 U.S.C. § 1331 to hear the union's suit. Under *Bell v. Hood*, 327 U.S. 678, 681 (1946), jurisdiction exists if the complaint is "drawn so as to claim a right to recover under the Constitution and laws of the United States." The complaint alleged a violation . . . of the subsequent collective-bargaining agreement contemplated by the Act, and prayed for relief under federal law. We do not consider the union's asserted federal claim to be "wholly insubstantial and frivolous," 327 U.S. at 682-83, so that the District Court lacked jurisdiction to entertain the union's suit. Thus, the District Court had jurisdiction for the purposes of determining whether the union stated a cause of action on which relief could be granted. *Id.* at 682.

457 U.S. at 21 n.6 (parallel citations omitted).

The identical reasoning applies here. Absent a demonstration that Verizon's claims are "wholly insubstantial and frivolous," the district court and the court of appeals had jurisdiction under section 1331 to consider them. *Id.* The

Fourth Circuit never engaged in that simple threshold analysis. Instead, it concluded that Congress intended for section 252(e)(6) somehow to withdraw the general federal question jurisdiction granted under section 1331. As we show next, the Fourth Circuit was wrong.[12/]

B. Section 252(e)(6) Does Not Withdraw the District Court's General Federal Question Jurisdiction.

Section 252(e)(6) does not preclude a federal court from exercising general federal question jurisdiction in cases challenging state commission enforcement actions. First, it is far from clear that section 252(e)(6) even addresses jurisdiction. It states:

> In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of Section 251 and this section [252].

47 U.S.C. § 252(e)(6). The section does not mention "jurisdiction," and its language is just as consistent with the conclusion that Congress was simply confirming the existence of a cause of action to challenge state commission actions under the Act. *See Steel Co.*, 523 U.S. at 90-91 (even statutes

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[12] The question whether a state commission has interpreted the parties' interconnection agreement contrary to its terms arises under state law. Whether a federal court could exercise supplemental jurisdiction under 28 U.S.C. § 1367 to consider that state law question depends on whether the state commission has asserted Eleventh Amendment immunity. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 121-23 (1984).

referring to "jurisdiction" frequently do not relate to "genuine subject-matter jurisdiction").

Second, even assuming that section 252(e)(6) does relate to the district court's subject matter jurisdiction, it cannot be construed as withdrawing preexisting jurisdiction in enforcement cases. Similar to the arguments the petitioners raise in *Mathias*, the crux of the Fourth Circuit's decision is that section 252(e)(6) has nothing to do with state commission decisions enforcing interconnection agreements. It concluded that enforcement determinations simply are not among the "determinations" at issue in section 252(e)(6). Pet. App. 36a-40a.

As we explain in our *Mathias* brief, where the point is more directly at issue, we disagree with this interpretation of section 252(e)(6). *See* Br. of WorldCom, *et al.*, No. 00-878, at 22-28. Enforcement determinations by state commissions are made "under" section 252. Even if this were not the case, however, then section 252(e)(6) would at most be silent concerning jurisdiction to review enforcement determinations. Thus, under the Fourth Circuit's own view of the case, section 252 does not contain a detailed (or indeed any) remedial scheme relating to enforcement of agreements that might conceivably displace the federal question jurisdiction of the district courts under section 1331.[13/] *See, e.g., Bowen v.*

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[13] Similarly, if section 252(e)(6) relates to a cause of action rather than to subject matter jurisdiction, either it gives carriers a cause of action for review of state commission enforcement determinations, or it is altogether silent concerning enforcement. In the latter case, the section would not constitute a detailed remedial scheme for enforcement that could displace a private right of action under 42 U.S.C. § 1983 or the inherent equitable authority of the federal courts to issue injunctions to enforce

(continued...)

Michigan Academy of Family Physicians, 476 U.S. 667, 673-76 (1986) (statute that expressly provides for judicial review in one class of cases does not eliminate section 1331 jurisdiction in another class of cases as to which it is silent) (superseded by statute on other grounds, when Congress amended 42 U.S.C. § 1395ff(b) (1988)).[14]

For these reasons, the Sixth Circuit in *GTE North, Inc. v. Strand*, 209 F.3d 909, 918-19 (6th Cir. 2000), *cert. denied*, 531 U.S. 957 (2000), reached a conclusion that was precisely opposite the one the Fourth Circuit reached here. In *Strand*, GTE claimed that the Michigan commission violated federal law under the 1996 Act by requiring it to make interconnection elements available by tariff, distinct from the interconnection agreement process that the Act specifies. GTE claimed that the Act preempted that decision. The Michigan commission argued that the federal court lacked subject matter jurisdiction,

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[13] (...continued)
federal rights. In any event, federal subject matter jurisdiction would exist even if federal law were ultimately construed not to provide a cause of action here. *Steel Co.*, 523 U.S. at 89.

[14] *See also Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 16 (2000) (explaining that *Michigan Academy* held that "statute's total silence" about judicial review in one class of cases "meant that, although review was not available *under § 405(g)*, the silence did not itself foreclose other forms of review, say review in a court action brought under § 1331"); *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 493-94 (1991) (holding that statute which expressly limits jurisdiction of federal courts with regard to specific type of case will not be construed as impairing section 1331's general grant of federal question jurisdiction with respect to closely related proceedings); *cf. Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 105-06 (1868) (holding that repeal of "an additional grant of jurisdiction" does not "operate as a repeal of jurisdiction heretofore allowed"); *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 515 (1868) (holding same).

because the case did not involve a determination "under" section 252, which it asserted was the sole basis to bring claims that state officials had violated the Act. The Sixth Circuit disagreed, finding nothing in the Act supporting the argument that section 252 somehow divests federal courts of general subject matter jurisdiction under section 1331. As the Sixth Circuit explained, a contrary holding would be "antithetical to the principle that the parties injured by a governmental entity's failure to adhere to the law may seek redress in the courts." *Id.* at 919.

Third, the Act itself makes clear that it cannot be construed to limit the general reach of section 1331 by implication. Section 601 provides that "[t]his Act and the amendments made by the Act shall not be construed to modify, impair, or supersede Federal . . . law unless *expressly* so provided in such Act or amendments." Pub. L. No. 104-104, § 601(c)(1) (emphasis added), *reprinted at* 47 U.S.C. § 152 note. Congress knows how *expressly* to limit the reach of section 1331, having done so elsewhere in the United States Code. *See, e.g.*, 42 U.S.C. § 405(h) ("[n]o action . . . shall be brought under section 1331 . . . of Title 28 to recover on any claim arising under this subchapter"). Plainly, section 252(e)(6) does not expressly limit the preexisting jurisdiction of the federal courts under section 1331.

Relying on section 601(c)'s preservation of *state* law, the Fourth Circuit concluded that Congress intended to leave review of enforcement decisions to state courts and preclude federal jurisdiction. Pet. App. 35a-40a, 47a. But the Fourth Circuit's analysis inexplicably ignores the express terms of section 601(c), which preserves both *federal and state* law, unless expressly superseded by the Act. With respect to enforcement cases, the Act expressly supersedes neither federal

court jurisdiction under section 1331 nor state court jurisdiction under applicable state law. Accordingly, section 601(c) preserves independent jurisdictional bases under federal law (such as section 1331) as well as state law. The Fourth Circuit's inexplicable reading of section 601(c) to preserve only *state* law jurisdiction contradicts the plain language of that section.

Fourth, where Congress intended the Act to limit a court's subject matter jurisdiction, it did so clearly and unambiguously. Thus, the Act expressly provides that "[n]o *State* court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." 47 U.S.C. § 252(e)(4) (emphasis added). Given that example of an express exclusion of jurisdiction elsewhere in the same section of the Act, the only fair conclusion is that in *enforcement* cases Congress was content to allow litigants the choice between state and federal court for pursuit of their federal claims.

Finally, citing the *Rooker-Feldman* doctrine, the Fourth Circuit intimated that it would violate "basic tenets of federalism" for a federal court to review a state commission's decision absent a specific grant of jurisdiction.[15] Pet. App. 50a. At the outset, that is simply wrong. This Court's recent precedent confirms that section 1331 empowers federal courts to review state agency decisions alleged to violate federal law. *See City of Chicago*, 522 U.S. at 163-64.

The *Rooker-Feldman* doctrine is inapposite for additional reasons. Under that doctrine, which represents the Court's interpretation of its jurisdictional grant in 28 U.S.C. § 1257,

[15] Whether the *Rooker-Feldman* doctrine applies is beyond the limited question on which the Court granted certiorari here.

lower federal courts lack jurisdiction to hear appeals from decisions of a state's highest court or to decide issues "inextricably intertwined" with the judgment of a state's highest court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).[16] This Court has never applied the *Rooker-Feldman* doctrine to decisions of state agencies that were not first reviewed by a state's highest court. To do so would foreclose resort to federal district court under section 1983 for virtually all alleged violations of federal law committed by state administrative agencies. This Court has consistently rejected imposition of such exhaustion requirements under section 1983. *See Edwards v. Balisok*, 520 U.S. 641, 649 (1997) (citing *Heck v. Humphrey*, 512 U.S. 477 481, 483 (1994)).[17]

CONCLUSION

For the reasons set forth above, the Court should reverse the Fourth Circuit's decision that the district court lacked general federal question jurisdiction under 28 U.S.C. § 1331.

[16] 28 U.S.C. § 1257 gives this Court jurisdiction to hear certain appeals from the highest court of a state. *See* 28 U.S.C. § 1257. The modern *Rooker-Feldman* doctrine is derived from the negative implication of that statute that the jurisdiction given to this Court is exclusive and does not extend to the lower federal courts.

[17] The *Rooker-Feldman* doctrine is inapplicable for the additional reason that section 252(e)(6) provides for a federal court action to review enforcement determinations. Where Congress specifically provides for a federal court action, the specific statutory grant overrides the more general negative implication of 28 U.S.C. § 1257 on which the *Rooker-Feldman* doctrine is based. *See generally, Morales v. TransWorld Airlines, Inc.*, 504 U.S. 374, 384-85 (1992).

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